

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

LAURA HEGI

Claimant

VS.

WESCON PRODUCTS

Respondent

Self-Insured

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Docket No. 214,757

ORDER

Claimant appeals the Award of Administrative Law Judge Jon L. Frobish dated October 24, 1997, wherein claimant was granted past medical treatment, unauthorized medical treatment, and future medical treatment upon application but denied any permanency from the alleged injury.

APPEARANCES

Claimant appeared by and through her attorney, Robert R. Lee of Wichita, Kansas. Respondent, a qualified self-insured, appeared by and through its attorney, Ross A. Hollander of Wichita, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The record and stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

ISSUES

- (1) What is the nature and extent of claimant's injury and/or disability?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary record, the Appeals Board makes the following findings of fact and conclusions of law:

Claimant was working for respondent as an assembler on June 25, 1996, when she fell, injuring her back. The injury was reported to claimant's supervisor and she was provided treatment with Jacques D. Blackman, M.D. Claimant was then sent to Larry Wilkinson, M.D., and ultimately to Jacob Amrani, M.D., who became claimant's treating physician. Dr. Amrani treated claimant conservatively for several months referring her for EMG's, which were normal. X-rays taken earlier were also read as being normal. Dr. Amrani continued treating claimant with nonsteroidals and pain medication. The claimant showed no improvement with use of the nonsteroidals and they were discontinued in October 1996. However, the use of the pain medication, specifically Ultram, was continued. Claimant was referred for physical therapy. However, records from physical therapy showed claimant missing appointments and the physical therapy was terminated. The physical therapy notes also indicated claimant was very resistant to progress and displayed signs of symptom magnification. Dr. Amrani's medical notes indicated claimant had been using Ultram, perhaps to excess, with an indication at one point that claimant was filling her Ultram prescription at four different pharmacies. Dr. Amrani ultimately released claimant, having nothing further to offer and applied no permanent impairments or restrictions to claimant as a result of the injury of June 25, 1996.

Claimant was referred to Bernard T. Poole, M.D., for an independent medical examination. Dr. Poole found no evidence of identifiable pathology resulting from the June 25, 1996, accident and assessed no functional impairment from that injury. He did find that claimant had a previous degenerative disc disease at L5-S1 with significant low back problems from 1995. He felt restrictions were in order from these pre-existing conditions but none from the June 1996 accident.

Dr. Poole found claimant's physical examination to be normal. But there were inconsistent findings regarding the examination. In particular, claimant alleged pain to touch in her low back but exhibited no such tenderness when going through physical motion testing. Dr. Poole concluded that, while claimant complained of pain in her back and her legs, she had virtually nothing by way of abnormal objective physical findings. He could identify no pathology or pathological process which could have been contributed to by any injury. He found significant the fact that claimant's complaints were very similar to those displayed in 1995, following an injury at her home.

Claimant was examined by Pedro A. Murati, M.D., on December 5, 1996, as a referral from claimant's attorney. Dr. Murati diagnosed piriformis syndrome which he stated could be precipitated by a fall or radiculopathy. On cross-examination, he acknowledged that the piriformis may also be a congenital problem.

In workers compensation litigation, it is the burden of the claimant to establish the claimant's right to an award of compensation by proving the various conditions upon which claimant's right depends by a preponderance of the credible evidence. See K.S.A. 44-501 and K.S.A. 1995 Supp. 44-508(g).

In this instance, the medical opinions are divided between Drs. Armani and Poole on one side and Dr. Murati on the other side. Neither Dr. Armani nor Dr. Poole assessed

claimant any permanent impairment as a result of this fall. Dr. Armani even questioned the legitimacy of claimant's complaints and expressed concern over claimant's possible overuse of medication. Only Dr. Murati found claimant suffered a permanent impairment from this injury and he acknowledged his diagnosis and claimant's complaints could have stemmed from radiculopathy, trauma, or a pre-existing congenital condition.

In this instance, the Appeals Board finds that, while it has been found that claimant suffered accidental injury arising out of and in the course of her employment on June 25, 1996, the medical evidence does not support a finding that claimant suffered any permanency as a result of that injury. Therefore, the Award of the Administrative Law Judge granting claimant past, future and unauthorized medical benefits and temporary total disability compensation through August 29, 1996, but denying claimant any permanent award as a result of this injury should be affirmed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Jon L. Frobish, dated October 24, 1997, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of April, 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Robert R. Lee, Wichita, KS
Ross A. Hollander, Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director